# *MONTGOMERY V LOUISIANA*
# PROVIDING SOME HOPE TO INMATES

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By ruling in January that "*Miller* announced a substantive rule that is retroactive,"[1] the Supreme Court ensured that individuals previously sentenced to mandatory life without parole for crimes committed as juveniles will have the chance to show they are deserving of parole. Noting the "'significant risk that' . . . the vast majority of juvenile offenders [sentenced to life without parole before *Miller*] 'face[] a punishment that the law cannot impose upon [them],'"[2] the Court held that all such inmates "must be given the opportunity to show their crime did not reflect irreparable corruption; and, if it did not, their hope for some years of life outside prison walls must be restored."[3]

*Montgomery* ensures that a reported two thousand individuals who received mandatory life-without-parole sentences before *Miller* will at least receive a hearing before a parole board. In Louisiana alone, the ruling requires parole hearings for more than two hundred inmates who otherwise would not have received them.

We were privileged to participate in *Montgomery* as counsel for an amicus group who have deep personal experience with many of these individuals, and who believe that providing them access to parole hearings is both legally and morally necessary.[4] These amici—a former Chief Justice of the Louisiana Supreme Court, a former Warden of Louisiana State Penitentiary at Angola, and members of the community who advocate for the defense and are in support of parole and clemency applications—believe, through years of personal observation and experience, that juvenile offenders develop and change while serving their sentences and that many go on to live exemplary lives, even in the extreme hardship of the prison system.

Amici made this point by highlighting several examples of juvenile offenders in Louisiana who received sentences of life without parole and overcame hopeless

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1. Montgomery v. Louisiana, No. 14-280, slip op. at 14 (U.S. Jan. 25, 2016).

2. *Id.* at 17 (quoting *Schriro v. Summerlin*, 542 U.S. 348, 352 (2004)).

3. *Id.* at 22.

4. Brief of Amici Curiae Pascal F. Calogero, Jr., Burk Foster, John Whitley, and the Louisiana Center for Children's Rights in support of Petitioner, Montgomery v. Louisiana, No. 14-280 (U.S. Jan. 25, 2016), 2015 WL 4607863 [hereinafter Brief of Amici Curiae].

circumstances. These individuals embody the Court's understanding, articulated in a series of cases from *Roper t*hrough *Miller*, that juvenile offenders are "most in need of and receptive to rehabilitation."[5] Amici did not address the merits of any individual conviction; their focus was on bringing to the attention of the Court the circumstances of a variety of other inmates similarly situated as Montgomery who, while juveniles, received mandatory life-without-parole sentences. These inmates would have no opportunity to persuade a parole board that they had fulfilled the ideal of rehabilitation if the rule of *Miller* were not given retroactive effect.

One of these examples was George Toca. Although the *Montgomery* opinion does not mention it, the Supreme Court originally granted certiorari to address the retroactivity question in Mr. Toca's case during the previous Term.[6] In 1984, at the age of seventeen, Mr. Toca was sentenced to life without parole for killing his best friend.[7] Shortly after Mr. Toca filed his merits brief, however, the State of Louisiana released him from prison, effective immediately, based on an *Alford*[8] plea to a lesser charge of manslaughter, mooting his case. The State did so even though it had argued that the Supreme Court should not grant his petition for certiorari because his "evidence of exemplary prison conduct and achievements" was irrelevant to the question of whether he should serve out his sentence of life without parole.[9]

Mr. Toca's record in prison was indeed exemplary. Despite believing he would never be a free man, he earned his high school diploma and his bachelor's degree while in prison.[10] And he completed countless other training and educational programs, including becoming a state-certified arborist, landscaping horticulturist, and commercial pesticide applicator. Harnessing these skills since his release, Mr. Toca now works full-time as a horticulture attendant at the LSU Health Science Center. Mr. Toca even started his own landscaping and pest control business, which he registered just twenty-six days after the State released him.[11]

Mr. Toca's improvement in such hopeless circumstances speaks volumes about the human capacity for development and rehabilitation, and serves as a

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5. Graham v. Florida*,* 560 U.S. 48, 74 (2010); *see also* Miller v. Alabama, 132 S.Ct. 2455, 2464 (2012) ("Because juveniles have diminished culpability and greater prospects for reform, . . . 'they are less deserving of the most severe punishments.'" (quoting *Graham*, 560 U.S. at 68)).

6. Toca v. Louisiana, 135 S.Ct. 781, No. 14-6381 (dismissed Feb. 3, 2015).

7. Brief of Amici Curiae, *supra* note 5, at 10-11.

8. North Carolina v. Alford, 400 U.S. 25 (1970) (a guilty plea entered by a criminal defendant, without admitting to the criminal act, admits that the evidence prosecution has would likely persuade a judge or jury beyond a reasonable doubt to find the defendant guilty).

9. Opposition to Petition for Writ of Certiorari at 21, *Toca*, 135 S.Ct. 781 (No. 14-6381).

10. *See* John Simerman, *Free After Three Decades in Prison, George Toca Sprints Toward a New Life*, THE ADVOCATE, Mar. 19, 2015, http://theadvocate.com/news/neworleans/neworleansnews/11828559-123/free-after-three-decades-in.

11. *Id.*; *see, e.g.*, Royalty Horticulture, LLC., Business Filing, http://coraweb.sos.la.gov/commercialsearch/CommercialSearchDetails.aspx?CharterID=1123947_CFG62; State of Louisiana, Dep't of Agr., *Arborist Licensee Report*, http://www.ldaf.state.la.us/wp-content/uploads/2016/02/Arborist.pdf.

reminder of the dangers of mandatory sentencing schemes for juveniles. He is by no means alone. Amici brought four other Louisiana cases to the attention of the Court, each of whom demonstrated real development and change under equally difficult conditions: George Gillam, convicted of murder at age sixteen, who during two decades in prison has developed mentoring skills and earned the status of "Class-A Trusty," allowing him to leave the grounds and work and speak in the community;[12] Christi Cheramie, also convicted of murder at age sixteen, who earned the status of "Pink Dot Trusty" and is allowed to volunteer and work in prison and in the community;[13] Larry Sylvester, convicted of murder at age fifteen, who based on his development and service while in prison was twice recommended for a commutation of sentence (although he did not receive it);[14] and Taurus Buchanan, convicted of murder at age sixteen, who obtained an education, volunteered and mentored, and got married while in prison.[15] Authority figures who worked closely with these individuals over the decades of their sentences have recognized them, among other things, as "an example of the moral rehabilitation that is taking place here [in Angola]," in the words of Mr. Gillam's warden,[16] and as "a woman who is worth a second chance in society," according to Ms. Cheramie's.[17]

None of these individuals is guaranteed to receive parole. But now they each have the opportunity to explain why they should. The Court expressed clear skepticism in the case of Mr. Montgomery that being "condemned to die in prison" could be "a just and proportionate punishment for the crime he committed as a seventeen-year-old boy."[18] Much will depend upon how individual parole boards exercise their discretion in each individual case, and though there is still much progress to be made, the Supreme Court has at least given these individuals a reason to hope.

12. Brief of Amici Curiae, *supra* note 5, at 14–18.
13. Brief of Amici Curiae, *supra* note 5, at 18–24.
14. Brief of Amici Curiae, *supra* note 5, at 24–28.
15. Brief of Amici Curiae, *supra* note 5, at 28–31.
16. Brief of Amici Curiae, *supra* note 5, at 15.
17. Brief of Amici Curiae, *supra* note 5, at 18.
18. Montgomery v. Louisiana, No. 14-280, slip op. at 22 (U.S. Jan. 25, 2016).